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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fifth session

SUMMARY RECORD OF THE 592nd MEETING

Held at the Vienna International Centre, Vienna,
on Thursday, 21 March 1996, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 10.25 a.m.

GENERAL EXCHANGE OF VIEWS (*continued*)

1. **Mr. BEGLEY** (Ukraine) stressed the importance of the items on the agenda of the current session, particularly for States that were taking the first steps towards reflecting the precepts and principles of international space law in their domestic legislation. In view of the growing tendency for space technology to be used for the socio-economic development of all peoples, there was an obvious need to extend the list of subjects dealt with by the Subcommittee to topics such as the defence and conservation of outer space for the benefit of mankind; commercial activities in outer space; and practical difficulties involved in broadening the framework of international cooperation, especially in new areas of space activity.

2. He agreed with other delegations on the need to enhance the effectiveness of the Subcommittee's work and to ensure that practical decisions were taken on specific questions. His delegation had suggested at the previous session of the Committee on the Peaceful Uses of Outer Space that the special equipment at his country's outer space telecommunication centre should be used for the organization of a regional United Nations centre. He urged the members of the Subcommittee to study the background material on a possible programme of work at the centre that had been sent to interested organizations in Member States.

3. **Mr. GWARY** (Nigeria) reiterated his delegation's firm belief that outer space, including the geostationary-satellite orbit, was a common heritage whose exploration and use should be regulated in a rational and equitable manner. The definition and delimitation of outer space was necessary for practical and legal reasons, since a clear distinction was needed in both respects between airspace and outer space.

4. With regard to the new working paper submitted by Colombia (A/AC.105/C.2/L.200 and Corr.1), he agreed that the geostationary-satellite orbit was a limited resource that must be used rationally, efficiently, economically and equitably, taking into account the special needs of developing countries, which should enjoy preferential rights of access to suitable orbital positions and frequencies. He advocated cooperation with the International Telecommunication Union (ITU) in developing legal principles for the orbit based on equity, access and efficiency, which were requirements of positive law already enshrined in the ITU treaties regulating the use of the orbit. Since space debris impeded the effective and rational use of the orbit, a legal regime was required to define and control such debris and to determine a State's liability for any damage it caused.

5. Although the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, had laid the basis for spreading the benefits of outer space exploration to all countries, irrespective of their level of technological development, only a negligible number of States had enjoyed such benefits to date. More vigorous action was necessary to develop a legal framework that would ensure the widest possible access to space resources and technology. His delegation would support the consideration of an appropriate framework for the rapid and efficient redistribution to the disadvantaged developing countries of the spin-off benefits of space science and technology. Efforts in that regard should not be construed as an attempt to impose undue obligations on any Member State but rather as a recognition of the interdependence of two different categories of State.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (*continued*) (A/AC.105/607 and Corr.1, A/AC.105/635, A/AC.105/637; A/50/20)

6. **Mr. ZOUBAREV** (Russian Federation) said that the rational use of the geostationary-satellite orbit was a serious and long-term problem on which the Subcommittee had rightly focused its attention. The International Telecommunication Union (ITU) played a relatively effective role in regulating the use of frequencies and orbits at the international level, adopting a balanced and comprehensive approach to the task that had, on the whole, proved successful in guaranteeing access to the orbit and the spectrum. However, a more inventive approach was needed if the lengthy debate on the legal aspects of the use of the orbit, for which ITU was not exclusively responsible, was to reach fruition.

7. Telecommunication development was being held up by overcrowding in the planned frequency bands and in a number of cases the prescribed coordination procedure had failed. Pursuant to resolution 18 adopted at ITU's Plenipotentiary Conference (Kyoto, 1994), steps were being taken to enhance the effectiveness of the procedure, including insistence on strict accountability in the execution of programmes and the provision of deposits to cover claims. Little use was made of planned frequency assignments, which represented frozen capacity that countries held in reserve for future use. A reduction in the period of reservation of orbital capacity for projected systems from nine years to five or six years might offer a partial solution to the problem of "paper satellites". It would be useful to discuss ways and means of controlling the use of the geostationary-satellite orbit and of resolving conflicts between prospective users, while respecting the principle of equitable access to the orbit. Imperfections in the application and registration procedure for frequency assignments meant that access to the orbit for new systems was very complicated, but none the less feasible, as evidenced by the recent registration of satellites from developing countries such as Brazil, China, India, Indonesia, the Islamic Republic of Iran, Mexico, Papua New Guinea and Togo.

8. A clear demarcation between ITU's mandate and that of the Committee on the Peaceful Uses of Outer Space was essential in order to ensure equitable and effective use of the geostationary-satellite orbit, while at the same time promoting sustainable development. The Committee's mandate should include the removal from the geostationary orbit of spent satellites; safeguarding the interests of countries that used telecommunication satellites for educational aims and socio-cultural development; and assessment of the impact of planned low-orbit satellite systems on existing satellites in the geostationary orbit.

9. The new working paper submitted by Colombia (A/AC.105/C.2/L.200 and Corr.1) offered hope of progress in the search for a balanced and rational solution to the problems associated with the geostationary orbit. While agreeing in principle with the approach adopted in the working paper, his delegation felt that recommendation (a) should be expanded to make it clear that the principles set forth in the paragraph applied only to systems of developing countries that were intended to serve their national territory. Systems to be used for international telecommunications, as well as mere "paper satellites", should not be entitled to a simplified or priority procedure for access to the geostationary orbit. He pointed out that the list of frequency bands and services reproduced in the working paper was not exhaustive. Other orbital positions and frequencies had been allocated on the basis of the coordination procedure which, however flawed, was much more flexible than the planned approach. Most planned assignments existed only on paper and it had become virtually impossible to allocate new frequency bands for satellite networks.

10. He agreed that spent satellites should be removed from the geostationary orbit, but considerable discussion would be necessary in order to arrive at an acceptable provision on the subject.

11. **Mr. AMROHI** (India) said that he shared the concern of other delegations at the lack of progress on the item. Although the absence of a definition of outer space had not yet caused any practical problems, the development of "aerospace objects" called for the early elaboration of an appropriate legal regime. It was to be hoped that progress in that respect would be assisted by further replies to the questionnaire on aerospace objects (A/AC.105/607, annex I, appendix).

12. He welcomed the new working paper on the geostationary orbit (A/AC.105/C.2/L.200 and Corr.1), which highlighted the difficulties faced by the developing countries and their unequal position in regard to the ITU coordination procedures. His delegation was in favour of those procedures being simplified in order to assist the developing countries. With regard to recommendation (a), he submitted that the term "equitable" in relation to access to the geostationary-satellite orbit was difficult to define and to apply in practice. It might therefore be useful to specify criteria or guidelines for determining the elements to be taken into account in that regard.

13. On the question of space debris, although the Scientific and Technical Subcommittee was discussing the technical aspects of the problem, it was appropriate that the set of principles recommended in the working paper should refer to it as well, in view of the real danger presented by space debris for the safe operation of satellites in the geostationary orbit.

14. **Mr. HASENKOPF** (Czech Republic), commenting on the definition and delimitation of outer space, said that the hope had been that the replies to the questionnaire on legal issues with regard to aerospace objects (A/AC.105/607, annex I, appendix) would enable the Subcommittee to determine the extent to which the use of such objects was covered by existing space legislation and whether it called for the development of a new legal regime. The number of replies received to date, which included that of his own country, fell short of expectations. Any States that were still willing to respond to the questionnaire should be asked to do so within a reasonable period. The Subcommittee should state its intention to conclude its analysis of the replies at its 1997 session and set out its findings in its report on that session to the Committee on the Peaceful Uses of Outer Space.

15. With regard to the geostationary-satellite orbit, his delegation welcomed the new working paper (A/AC.105/C.2/L.200 and Corr.1). It believed that the orbit and the radio-frequency spectrum were limited natural resources that should be used rationally, efficiently, economically and equitably for the benefit of all States. The paper's recommendations sought to reconcile conflicting claims to the same orbital position by a country that already had access to the geostationary-satellite orbit and one that had not. His delegation considered that the recommendation in paragraph (a) required further detailed analysis in the light of existing ITU practice.

16. **Mrs. ÜNEL** (Turkey) welcomed the new Colombian document (A/AC.105/C.2/L.200 and Corr.1), whose conclusions were based essentially on article 44 of the Constitution of ITU, a provision which Turkey, as a member of that organization, fully endorsed. One conclusion to be drawn from that article was that, in order to allow equitable access to the geostationary orbit, the Radio Regulations must be observed. The Regulations constituted an international instrument with mandatory force and were the only legal source to which the article made reference; it was through them that the special needs of the developing countries were to be taken into account. If the Radio Regulations did not permit equitable access to the geostationary orbit,

taking into account those special needs, they should be amended. At that point the Subcommittee must remember that, in dealing with the use of the orbit, its mandate required it to act without prejudice to the role of ITU. Moreover, legally speaking, it was wrong to interpret and apply a convention that had the force of law by resort to a General Assembly resolution, a class of instrument which generally did no more than enunciate guiding principles.

17. That was particularly so in the case of the Colombian recommendation (a), which would give preference to developing countries with space capability over countries that were no longer developing but had little or no space industry. In effect, the recommendation would create preferential rights for a particular category of countries, a situation contrary to article 1 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, which provided that those activities should be carried out for the benefit and in the interests of all countries irrespective of their degree of economic or scientific development.

18. In conclusion, her delegation did not believe that the Colombian document would assist the Subcommittee, but in a spirit of compromise it would not object if the Subcommittee decided that the document should be used as the basis for its future work on the geostationary orbit. However, her delegation remained firmly opposed to the idea that the level of national development should be a criterion for access to the orbit.

19. **Mr. DJELANTIK** (Indonesia) stressed the need for a special legal regime to regulate access to and utilization of the geostationary orbit by all States, taking into account the needs of developing countries and the particular situation of the equatorial countries. His delegation welcomed the new working paper presented by Colombia (A/AC.105/C.2/L.200 and Corr.1). In his view the roles of ITU and of the Subcommittee were complementary. The Subcommittee could contribute to establishing a special legal regime to regulate the use of the geostationary orbit; ITU regulated only the technical aspects of its utilization, while the Committee on the Peaceful Uses of Outer Space and its subcommittees were concerned with the political and legal aspects of the peaceful uses of outer space. Cooperation with ITU should therefore continue. He suggested that, at its thirty-sixth session, the Subcommittee should continue to elaborate legal principles for the use of the geostationary orbit without prejudice to the role of ITU.

20. **Mr. LOIBL** (Austria) said that his delegation favoured a functional approach to the question under consideration and to the questionnaire. The answers to the questionnaire supported his delegation's view that areas should be identified in which more work was needed. The Subcommittee might consider developing model rules as part of its work. Customary international law would be very difficult to identify in such a new area as space law. If the Subcommittee decided to take up the question of space debris it should adopt a comprehensive approach to the subject. He welcomed the new Colombian working paper (A/AC.105/C.2/L.200 and Corr.1), which would further the debate on the geostationary orbit.

21. **Mr. de YTURRIAGA** (Spain) thanked the delegation of Colombia for its new working paper. His delegation approved the general objective of equitable access to the geostationary orbit, taking into account the needs of the developing countries and other countries in a specific geographical situation. However, problems of definition arose: "equitable", for instance, was a subjective expression and hard to define. What was equitable for one country might not be so for another. In addition, what was meant by a "developing country"? Mexico, classified as a developing country, had already joined the Organisation for Economic Co-operation and Development; Colombia and Brazil were developed technologically but had no space industry. It would therefore be better to take a pragmatic approach, like that of ITU, to issues connected with

the geostationary orbit. He agreed with the Turkish representative that rules of law could not be modified by resolutions of the General Assembly. It would be best to leave changes of that kind to ITU, of which almost every country on the Subcommittee was a member.

22. He approved the idea that the Subcommittee should direct its attention to issues such as space debris, on which there was some prospect of progress.

QUESTION OF REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE

23. **The CHAIRMAN** reminded the Subcommittee that the Scientific and Technical Subcommittee, at its thirty-third session, held earlier that year, had concluded that at the present time revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was not warranted (A/AC.105/637, para. 70). He therefore suggested that the Legal Subcommittee might, as it had done the previous year, decide not to open the item for discussion. It might at the same time wish to agree that, at its next session in 1997, consideration of the Principles by the Working Group on agenda item 3 should again be suspended for one year pending the results of the work in the Scientific and Technical Subcommittee, without prejudice to the possibility of reconvening the working group on that item if, in the opinion of the Legal Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee at its 1997 session to warrant doing so. He suggested that the item should be retained on the Subcommittee's agenda to give delegations an opportunity to discuss it in plenary meetings. The Subcommittee had adopted the same arrangements the previous year (see document A/AC.105/607, paras. 27 and 29).

24. He noted that no delegation had expressed the wish to address the item. He would therefore take it, if he heard no objection, that the Subcommittee did not wish to open discussion of the item at the present session and that the arrangements he had just described were acceptable.

25. *It was so decided.*

The meeting rose at 11.15 a.m.